

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SIRMICHAEL DYESS,
Petitioner,
v.
WARDEN,
Respondent.

No. 2:23-cv-2003 DJC KJN P

ORDER

Petitioner, a state prisoner proceeding pro se, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 16, 2023, the Magistrate Judge filed findings and recommendations herein which were served on Petitioner, and which contained notice to Petitioner that any objections to the findings and recommendations were to be filed within fourteen days. Petitioner did not file objections to the findings and recommendations.

The Court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The Magistrate Judge's conclusions of law are reviewed de novo. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Having reviewed the file, the Court finds the findings and

1 recommendations to be supported by the record and by the Magistrate Judge's
2 analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The findings and recommendations filed November 16, 2023, are adopted
5 in full;

6 2. This action is dismissed without prejudice; and

7 3. The Court declines to issue the certificate of appealability referenced in 28
8 U.S.C. § 2253 as Petitioner has not made a substantial showing of the denial of a
9 constitutional right, see 28 U.S.C. § 2253(c)(2).

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11 IT IS SO ORDERED.

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13 Dated: **January 5, 2024**


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

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